SUPREME COURT, U. S.

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1970

No. 712

TRIANGLE IMPROVEMENT COUNCIL, *et al.*,

Petitioners,

v.

WILLIAM S. RITCHIE, COMMISSIONER, STATE ROAD COMMISSION OF THE STATE OF WEST VIRGINIA, *et al.*,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

RESPONSE OF PETITIONERS TO BRIEF OF THE FEDERAL RESPONDENTS IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI

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Opinions Below

Since the filing of the petition, the opinion of the district court (Pet. App. 1a-25a) has been reported at 314 F. Supp. 20,[1] and those of the Court of Appeals at 429 F.2d 423.

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[1] The Brief in Opposition erroneously identifies that citation containing the order and dissenting opinion of the Court of Appeals on petition for rehearing *en banc*. Respondents' Brief, p. 1 (hereinafter cited as R.B. —).

Argument

The federal respondents identify the questions presented as whether the Department of Transportation correctly construed its own *regulation* regarding the requirement of a relocation plan, and whether the district court's findings relating to the availability of relocation housing is clearly erroneous. R.B. 2. This is a substantial variance from the issue presented in the petition and throughout the litigation and as identified by the Court of Appeals. The petitioners have always asserted that the original regulations promulgated by the Department constitute an erroneous application of the underlying statute, the 1968 amendments to the Federal Aid Highway Act, 23 U.S.C. §501, et seq. The question of the construction of regulations arose only when the Department changed its regulations regarding relocation during the pendency of the appeal. (Pet. App. 60a-63a.) Recognizing this, Judges Sobeloff and Winter, dissenting from the denial of rehearing *en banc*, stated, without contradiction: "The sole issue on this appeal is whether federal law requires submission of a detailed relocation plan as insisted by appellants." (429 F.2d at 424; Pet. App. 37a-38a.) Answering this question in light of the new regulation, Judge Sobeloff, again without contradiction, states:

> There is, of course, no dispute within the court that appellants' [petitioners'] position on the applicability of the 1968 amendments has now become the law and that comprehensive relocation plans are required before construction can be approved. Rather, my brethren seem to think that the new regulation, expressly recognizing the plaintiffs' rights under the 1968 amendments, has somehow eliminated the need for relief . . .
>
> . . . On the contrary, the defendants' refusal to award the plaintiffs their rights cries out for redress. (*Id.* at 426; Pet. App. 41a-42a.)

Once so clarified,[2] it can be seen that these are not "non-recurring issues of diminishing importance." (R.B. 9.)[3] Rather the issue is one of fundamental importance, not simply to the residents of the Triangle, but to the administration of justice. Here the Court of Appeals has interpreted the new regulations of the administrative agency as upholding petitioners' legal position—that a relocation plan is required. 429 F.2d at 426; Pet. App. 41a. Nonetheless, that court affirmed the district court's opinion which was based on a discarded regulation, and granted no relief to the petitioners. It is one thing for the courts to declare that the law is not in your favor. It is quite another for the

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[2] Errors of the same nature are found elsewhere in Respondents' Brief. The opening statement describes this action as seeking "to prevent the construction" of the highway (R.B. 2). That claim was abandoned in the district court. Respondents assert that petitioners relied in the district court on provisions of an Instructional Memorandum of the Department of Transportation to sustain their position that a relocation plant was required. (R.B. 4.) In fact, I.M. 80-1-68, the memorandum referred to, specifically excluded projects such as the one here from its coverage (§5(b); Pet. App. 52a.) Petitioners asserted that the memorandum incorrectly interpreted the *statute*, by denying it retroactivity. The district court rejected this, relying on the principle of deference to the administrator's interpretation of the statute he is enforcing, 314 F. Supp. 29-30; Pet. App. 19a-21a. During the pendency of the appeal, the Department changed its regulations, giving the relocation requirement retroactive effect. Pet. App. 60a-63a. It was this change in the law that led the dissenting judges in the Court of Appeals to assert that the panel opinion adopting the reasoning of the district court "logically cannot serve" to dispose of the issue, under the principle of *Thorpe* v. *Housing Authority*, 393 U.S. 268, 281. 429 F.2d at 426; Pet. App. 41a.

[3] Even if the issue *were* limited to the retroactivity of the 1968 amendments, the impact would be substantial. Of the proposed 9000 miles of the interstate highway system which was not yet constructed when the statute was enacted, much had passed the stage of "authorization to acquire" being granted. 1968 U.S. Code Cong. Adm. News 4046. If the statute does not protect the people affected by these projects, many of which are in congested urban areas, it will have little meaning.

courts to find that the law entitles you to relief, but to refuse to grant it.[4]

Finally, respondents suggested that the finding of the district court that relocation housing is available makes it unnecessary to be concerned with the question of whether the law requires a relocation plan, since in any event petitioners are being protected. This is untrue on two grounds: First, it is the Department's own regulations, based on their experience in relocation (see Pet. 17 n. 8), which define the requirement of "satisfactory assurances" in the statute as calling for comprehensive relocation planning. I-M 80-1-68 (7) (Pet. App. 52a-55a). Second, the finding of the district judge was based largely on general assurances which he took in "good faith." 314 F. Supp. 30; Pet. App. 22a. These self-serving declarations of the highway officials were contrary to documentary evidence submitted by petitioners (Plf. Exh. No. 12; Tr. 414-15), and even in the best light were based on the experience of relocating 2000 predominantly rural white persons state wide, bearing little relation to the problems of placing a large number of poor black persons in a saturated and discriminatory housing market.[5] Moreover, if it is indeed true that relocation housing is available, the preparation of a plan should be a simple matter. The concerted resistance of respondents throughout this litigation strongly suggests that the plan

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[4] It is little wonder, under these circumstances, that the residents of the Triangle took to "self help" measures to stop the bulldozers from destroying their homes. *New York Times*, July 13, 1970, p. 62, col. 1.

[5] One of the programs which, it was asserted, would ease the relocation problem, was the availability of rent supplements. (Tr. 412-15.) However, as the letter attached as Appendix A to this response indicates, rent supplements have been denied because the only replacement housing available, although more expensive, did not meet the federal standards.

would demonstrate the lack of such housing, and justify petitioners' demand for compliance with the 1968 amendments.[6]

CONCLUSION

WHEREFORE, for the foregoing reasons, and for those stated in the petition in chief, a writ of certiorari should be granted.

Respectfully submitted;

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[6] Two examples should make the distinction clear. The district court relied on the availability of public housing, without finding that the displacees were eligible. 314 F. Supp. at 31, Pet. App. 23a; see R.B. 5-6. The plan would require such a finding. Second, respondents point to the delay in a planned urban renewal project as easing the housing shortage (R.B. 8). At best, this would mean that the highway displacees could move, for a short time, to housing already slated for demolition for the renewal project. A comprehensive plan would consider these long range implications.

APPENDIX A

[SEAL]

WEST VIRGINIA DEPARTMENT OF HIGHWAYS
OFFICE OF THE DISTRICT ENGINEER
FIRST DISTRICT
1340 Smith Street
Charleston, West Virginia
25301

William S. Ritchie, Jr.
Commissioner

Layman Smith
District Engineer

June 12, 1970

Mrs. Dorothy Collins
709½ Bullitt Street
Charleston, West Virginia

RE: Project I-77-3 (66) 100
Parcel No. 1-1

Dear Mrs. Collins:

As a result of the inspection of your replacement property, the Department cannot approve your application for a replacement housing payment. Attached are the minimum requirements for a decent, safe and sanitary property as set forth in the Federal Highway Act of 1968. The structure you are now occupying does not meet the standards that are checked on the enclosed form.

In the event you should move to another property within one year after you moved from the above captioned parcel

and the new property meets the attached requirements or if you change your present dwelling to meet these requirements, the Department will reconsider your application.

Very truly yours,

/s/ L. C. McCann

L. C. McCann
District Right of Way Agent

LCM/A/c
Enclosure